



Senate Bill 136

Senate Committee on Health Policy

March 7, 2013

The American Civil Liberties Union of Michigan strongly opposes SB 136, allowing for broad religious discrimination across a spectrum of services in Michigan. Accommodation based on one's religion is a vigorously protected right in America; this is an area where the ACLU is on the front lines.

I am proud to say that the ACLU has a rich history of defending religious liberty AND helping to protect people of all faiths from religious discrimination.¹

- Abby Molar, a high school valedictorian in Macomb County, was prohibited from using a biblical quote in a dedicated section of the school yearbook. The ACLU challenged and won based on the fact that Abby's words were private student speech, not government speech.
- Joe Hanas, a devout Catholic man, was sentenced by the Genesee County Drug Court to a rehab center in Flint run by the Pentecostal Church where he was refused any remnants of his catholic faith and was required to accept the Pentecostal faith. The ACLU was successful in getting Joe removed into a secular program and where he could practice his religion.

While we all have a right to our religious beliefs, this does not give us the right to use our religion to discriminate and impose those beliefs on others who do not share them.

Instances of institutions and individuals claiming a right to discriminate in the name of religion aren't new. Unfortunately, we've seen this before. In the 1960s, we saw institutions object to laws requiring integration in restaurants because of sincerely held beliefs that God wanted the races to be separate. We saw religiously affiliated universities receiving public funding refuse to admit students who believed in interracial dating. In those cases, we recognized that requiring integration was not about violating religious liberty; it was about ensuring fairness. It is no different today.

The real-life impact of these refusals can be devastating. If they succeed, hospitals could refuse to perform medically necessary abortions for pregnant women in life-threatening situations. That means, a pregnant woman could be left to die in a hospital emergency room because of the religious beliefs of the hospital owners.

Especially in this regard, SB 136 is confusing and lacking in reasonable protections for emergency situations. On page 12 at section (9), the emergency exception applies to a provider, but not to a facility. So a doctor who felt morally obligated to his duty to help a person in an emergency situation could be prohibited from taking action by the facility.

We all remember the story of Savita Halappanavar, a 31-year-old dentist in Ireland who was suffering an early miscarriage and was left to linger in pain for 3 days before she died of a septic blood infection because of the prolonged exposure of her cervix. The hospital would not allow the fetus to be removed until the heartbeat had stopped, despite the clear medical evidence that the pregnancy had no chance and the pleas of help from both Savita and her husband.

Such outrageous events can and do occur in the United States. A doctor practicing at a Catholic hospital in the northeast tells of how he saved a woman's life, after the hospital's ethics committee refused to approve an abortion. He talks about the condition of the woman – that the pregnancy was in the vagina. It was over, and she was septic to the point that he was desperately trying to keep her blood pressure up, and had her on a cooling blanket because she had 106 degrees fever. He testified that the woman "was dying before our eyes. . . . Her bleeding was so bad that the whites of her eyes, were red, filled with blood." After the delay, the patient was in the Intensive Care for 10 days, and developed pulmonary disease resulting in lifetime oxygen dependency.

These experiences are not limited to cases of abortion. It will also impact women who are survivors of sexual assault who are refused or not made aware of emergency contraception to prevent an unwanted pregnancy. A bill such as this could interfere with University programs that try to provide counseling services, birth control and STD testing and treatment to their students.

Other parts of this bill are contradictory. The exception on page 12 at section (10) is in conflict with the definition of what it means to "participate in a health care service" on page 4 at section (3)(g), on one hand allowing a refusal and on the other prohibiting it. And the potential impact on Universities and other teaching and research institutions are likely to be in conflict with accreditation and professional standards that govern many of their programs.

And finally, a most glaring contradiction (on pages 6 and 10) in the bill that is titled the "religious liberty and conscience protection act" prohibits someone who may hold as part of their religious or moral beliefs an objection to discriminating against people based on sexual orientation, for example, from refusing to employ or contract with a provider who they know discriminates based on sexual orientation.

If we allow institutions charged with taking care of our health – hospitals, medical groups, insurance companies, pharmacies and research universities – to refuse services because of religious beliefs, we all – regardless of our own beliefs – could face substantial and sometimes insurmountable obstacles when we seek medical care. Our laws must ensure that a patient's health is never compromised by the religious objections of some.

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2011-2012

Religious Restrictions in Prison

In 2009 the ACLU agreed to represent Muslim and Seventh-Day Adventist prisoners in a religious freedom class action in federal court. Although the Michigan Department of Corrections accommodates Jewish inmates by providing kosher meals, it denies Muslim inmates halal meals. Further, although inmates are excused from their prison jobs for many reasons—including doctor appointments, therapy and visitation—the MDOC will not release them from work on their Sabbath. The ACLU, working with the General Conference of Seventh-day Adventists, sued the MDOC under the Religious Land Use and Institutionalized Persons Act, so that the inmates' religious practices will be accommodated. In July 2012 a magistrate judge ruled in the inmates' favor. (Dowdy-El v. Caruso; Cooperating Attorneys Daniel Quick, Doron Yitzchaki and Trent B. Collier from Dickinson Wright, Co-Counsel Todd McFarland from the Conference of Seventh-Day Adventists, and Legal Director Michael J. Steinberg.)

2010-2011

Parolees Barred from Seeing Kids, Marrying and Going to Church – The Michigan Parole

Board sometimes imposes automatic conditions of parole on inmates leaving prison that deny them fundamental constitutional rights – even though there are no individual determinations of

whether the conditions are necessary to protect the community. In February 2009, the ACLU, working with Legal Aid of Western Michigan and the University of Michigan Clinical Law Program, filed a lawsuit on behalf of two men who were convicted for having sexual contact with young women who were just under of the age of consent. The men, having finished their prison terms, were now barred from seeing their own children even though psychological experts have determined that the children of these men would benefit from maintaining relationships with their fathers and the fathers pose no danger to their children. The men are also barred from going to church and marrying women who have children. In 2010, the case was successfully settled when the MDOC changed the parole conditions for our clients and began to conduct a more individualized assessment of former sex offenders to determine whether such harsh conditions are necessary. The ACLU continues to work for systemic changes to the process of assigning parole conditions that restrict parolees' fundamental rights. (*Houle v. Sampson*; Staff Attorney Miriam Aukerman, Legal Director Michael J. Steinberg and U-M Clinical Law Professors Paul Reingold, Kimberly Thomas, Joshua Kay and Vivek Sankaran.)

2009-2010

Minister Sent to Prison for Criticizing Judge Reverend Edward Pinkney is an activist from Benton Harbor who for years has spoken out against the discriminatory treatment of African Americans in Berrien County courts. In 2007, Rev. Pinkney was charged with election law violations and convicted by an all-white jury. While on probation pending a motion for a new trial, he wrote an article for a small Chicago newspaper about his case in which he severely criticized the judge that presided over the case as being racist, dumb and corrupt. Paraphrasing Deuteronomy, Rev. Pinkney also predicted in the article that unless the judge changed his ways, God would "smite" him with "consumption," "fever," "inflammation" and "burning." Based solely on the newspaper article, the judge found that Rev. Pinkney violated the terms of his probation and another judge sentenced him to 3-10 years in prison. The ACLU represented Mr. Pinkney on appeal on free speech grounds and secured his release on bond pending appeal. In July 2009, the Court of Appeals reversed the order revoking his probation. Then in February 2010 the ACLU won a motion for Rev. Pinkney reducing his probation by more than a year and permitting him to protest at the courthouse while on probation. (*People v. Pinkney*; Cooperating Attorneys: James Walsh and Rebecca O'Reilly of Bodman, LLP, Douglas Mullkoff and ACLU Staff Attorney Dan Korobkin.)

Ferndale Church Has Right to Help Poor People The ACLU successfully represented the First Baptist Church of Ferndale in its quest to fulfill its religious mission of serving the poor. Initially, we wrote a letter to the Zoning Board of Appeals explaining that the board must permit the church to provide services to homeless at the church in order to avoid violating the federal Religious Land Use Act. After the permit was granted and certain neighbors sued the zoning board, the ACLU filed a friend-of-the-court brief on behalf of the church. In December 2009, the court ruled in favor of the church. (*Ashmore v. City of Ferndale*; Cooperating Attorney Marshall Widick and Staff Attorney Dan Korobkin.)

ACLU Urges Court Rule Allowing Women in Religious Veil to Testify The ACLU submitted a comment and testified on a proposed court rule that would give judges the discretion to bar women who wear religious veils called "niqabs" from testifying. The ACLU argued that denying women their day in court because of their religious dress violated the Michigan Constitution's Religious Freedom Clause. It also provided numerous examples of judges and juries determining the credibility of witnesses without seeing their facial expressions, including when the judge is blind, when witnesses with disabilities do not have control of their facial movements and when the former testimony of an unavailable witness is simply read to the jury by a third person. The comment was signed by a broad coalition of domestic violence and religious groups including the Baptist Joint Committee for Religious Liberty, the American Jewish Congress, the Michigan Conference of the United Church of Christ, and the Jewish Council for Public Affairs. Although the Michigan Supreme Court ultimately adopted the rule in 2009 by a 5-2 vote, we will urge judges to exercise their discretion in a manner that does not deny an entire class of women their right of access to the court. (Staff Attorney Jessie Rossman).

Religious Discrimination by Drug Court – Joe Hanas appeared in the Genesee County Drug Court on a marijuana charge. The judge gave Hanas the choice of either being convicted of a drug offense and sentenced to jail, or going to a Pentecostal drug treatment center called the Inner City Christian Outreach Program (ICCOP). He chose the treatment center. Much to his surprise, ICCOP officials insisted that Hanas, who is Catholic, give up his rosaries and refrain from seeing a priest because they claimed that Catholicism is witchcraft. The officials also demanded that he participate in Bible readings, faith healing and daily church services where residents spoke in tongues. When Hanas' attorney asked the drug court judge to move Hanas to a secular drug treatment program, the judge declared that Hanas failed the program and proceeded to convict him and sentence him to boot camp. After the ACLU publicized the treatment individuals receive at ICCOP, the drug court stopped sending people there. The ACLU asked the Michigan appellate courts and the U.S. Supreme Court to reverse Hanas' conviction, but each of the courts have declined to hear the case. In 2006, we filed a habeas corpus petition in U.S. District Court and a civil lawsuit Mr. Hanas' behalf. In February 2008, Judge Arthur Tarnow issued a published opinion finding that Hanas' rights under the Free Exercise Clause and the Establishment Clause were violated. The county then settled the civil case for \$100,000 in damages and attorney fees and the state agreed to erase the conviction from Mr. Hanas' record. People

v. Hanas and Hanas v. Inner City Christian Outreach, Inc.; Cooperating Attorneys: Andrew Nickelhoff, Greg Gibbs, Glenn Simmington, Erwin Chemerinsky and Frank Ravitch).

2007-2008

Devout Student Suspended for Long Hair -- Claudius Benson is a ninth grader at Old Redford Academy, a public charter school in Detroit. He and his mother maintain a sincerely held religious belief based on a verse in Leviticus that he is forbidden to cut his hair. Despite the religious basis for his long hair, ORA suspended him and referred him for expulsion for violating its "closely cropped" hair policy. In October 2007, the ACLU filed a lawsuit in Wayne County Circuit Court against ORA for violating Claudius' religious freedom rights under the Michigan and U.S. Constitutions and the Michigan Civil Rights Act. The judge issued an injunction ordering the school to let Claudius come back to school. (Benson v. Old Redford Academy; Attorney: Mark Fancher).

Religious Discrimination Against Sikhs -- As an observant Sikh, Wayne State University student Sukhpreet Garcha is required to wear a "Kirpan," or a ceremonial sword in sheath, as a reminder of his solemn duty to help the needy and work for justice for all. In August 2005, Mr. Garcha was videotaping practice for the Wayne State football team when he was approached by Wayne State police officers and told that if he did not remove his Kirpan, he would be arrested. Despite his polite explanation that his faith required him to wear the Kirpan, he was charged with a violation of the Detroit knife ordinance. The ordinance bans knives more than three inches long, but makes numerous exceptions for those who use knives for "work, trade, business, sport or recreation." However, the ordinance makes no exceptions for those who carry knives for religious purposes. The ACLU filed a friend-of-the-court brief on behalf of Mr. Garcha arguing that the city must accommodate his religious beliefs and dismiss the case. In November 2005, a Detroit judge ruled that the police violated Mr. Garcha's rights under the Michigan Constitution and dismissed the case with prejudice. Additionally, Wayne State has said that it will no longer arrest or otherwise punish Sikhs wearing Kirpans as an expression of their faith. (City of Detroit v. Garcha; Cooperating Attorney: Robert Sedler).

2005-2007

Swimming While Muslim -- A 7th grade student named Jamanah Saadeh went on an end-of-school trip with her Ann Arbor public school to Rolling Hills Water Park in June 2005. As an observant Muslim, Jamanah's faith allows her to only expose her hands and face in public. Accordingly, she brought a pair of nylon pants, a light cotton t-shirt and a head covering (hijab) to wear while swimming. To Jamanah and her teachers' shock and dismay, the park supervisor demanded that Jamanah exit the water because she was not wearing a bathing suit. On the advice of Jamanah's teachers, Jamanah's mother contacted the ACLU. After negotiations with the ACLU, the county adopted a model policy in 2006 that does not deny access to individuals because of their religious garb. We believe this is the first written pool policy to accommodate religious dress and we hope the policy will serve as a model for other pools throughout the state and country. (Cooperating Attorney: Gayle Rosen with the assistance of ACLU legal intern Maleeha Haq).

Riding the Bus While Muslim -- Tasha Douglas is a devoted Muslim woman who wears a niqab, or veil that reveals only her eyes. This summer a public bus driver in Grand Rapids forbade Ms. Douglas from riding the bus because her face was covered. Although she used the Grand Rapids bus system -- "The Rapid" -- on numerous occasions without incident, the driver insisted on applying The Rapid's no-face-covering rule to Ms. Douglas. After the ACLU met with bus company officials, The Rapid repealed its rule, agreed to conduct diversity training and offered Ms. Douglas a year-long bus pass. (Cooperating Attorneys: Miriam Aukerman, Michael Nelson and Gary Gershon with assistance from Law Intern Jessie Rossman).

Hijabs and Mug Shots -- In January 2006, we received a desperate call from a Muslim woman. The FBI was demanding that she be photographed for an ongoing investigation without her hijab or headscarf. While the woman was willing to have her photo taken, she was not willing to commit a sin and allow men who were not members of her family see her without the headscarf. We called the U.S. attorney who agreed that there was no reason why the photo could not be taken with the hijab and directed the FBI to accommodate the woman's religion. (Attorney: Kary Moss).

Protecting the Religious Freedom of Pentecostal Church Members -- The City of Ypsilanti issued an eviction notice ordering a small Pentecostal church group to leave the downtown building where it met. Under Ypsilanti's zoning ordinance, secular groups are permitted to meet downtown, but religious groups must meet outside the downtown area. After the ACLU wrote a letter explaining how the City's action as well as its zoning ordinance violates both the Religious Land Use Act and the First Amendment, the city reversed its position. Some city officials have

pledged to change its ordinance so they may exclude religious groups in the downtown area and make room for more bars. The ACLU is monitoring any such attempts. (Attorneys: Michael J. Steinberg and David Santacroce with assistance from U-M law student Jeffrey Landau).

2004-2005

Valedictorian's Religious Liberty Defended – Abbey Moler was the valedictorian of her class at Utica High School. She and other high achieving students were profiled in a section of the school yearbook. As part of the profiles, students were asked to submit "words of wisdom" to pass on to other students. However, when the yearbook was published, Ms. Moler's entry was omitted because it contained a passage from the bible. The passage was from Jeremiah and said: "'For I know the plans I have for you,' says the Lord, 'plans to prosper you and not to harm you, plans to give you hope and a future.'" The ACLU agreed to represent Moler because once the school gave her a forum for speech, it could not constitutionally suppress her expression simply because it was religious in nature. In May 2004, the ACLU worked out a settlement with the school district obviating the need to file a lawsuit. The district agreed to change its policy, provide in-service training to teachers on religious freedom issues and place a sticker in the yearbooks on file with the school containing Abbey's advice. (Attorneys: Michael J. Steinberg and Marshall Widick).

Government Interference with Hanukkah – In December 2004, Central Michigan University officials seized a student's Hanukkah candles from his dormitory room. Although the university allows students to smoke in this particular dorm, it claimed that the Hanukkah candles posed a fire hazard. Central Michigan ACLU President John Scalise wrote a letter to the University arguing that it violated students' religious freedom to accommodate students desire to smoke but not to accommodate students' religious use of celebratory candles. The letter stated that there were other ways to address safety concerns – such as requiring that students remain in the room and that they place candles on a fireproof surface – without banning religious candles altogether. Soon after the letter was sent, CMU changed its policy.

2003-2004

Spying on Peaceful Religious and Political Organizations – In the 1970's, in response to the widespread abuse of power by the FBI, the government adopted a policy of no longer spying on American political and religious organizations unless there was reasonable suspicion of criminal activity. In 2002, Attorney General John Ashcroft scrapped that provision and re-opened the door to spying on organizations and individuals who are simply exercising their right to dissent. The ACLU of Michigan is preparing FOIA requests on behalf of several Muslim, Arab and anti-war organizations across the state to determine whether the FBI and local law enforcement agencies are infiltrating organizations not engaged in criminal activity. (Attorneys: William Wickers and Noel Saleh).

ACLU Protects Church's Free Speech Rights – During the Iraq War in the spring of 2003, Rev. Eric Stone erected a large sign on the lawn of the Wesley Foundation in Mt. Pleasant stating, "We Value All Life; End the Cycle of Violence." Claiming that the church violated the city sign ordinance, the city demanded that the sign be taken down. Working with Rev. Stone, the Central Michigan Branch of the ACLU reviewed the ordinance and, in a letter to Mt. Pleasant, pointed out that the ordinance was unconstitutional because it did not allow for political signs. The city agreed with the ACLU's position, allowed Rev. Stone to keep the sign up and stated that it would review the ordinance. (Letter written by John Scalise, President of the Central Michigan ACLU).

The Right To Be Baptized in Public – Until recently, the Michigan Department of Natural Resources had a rule for use of state parks that allowed groups to seek permits for large group activities, but prohibited church services unless they were "interdenominational." The Rev. William Stein of Baptism USA Ministries came to the ACLU for assistance when the DNR, relying on this rule, refused to issue him a permit to perform baptisms at Fort Custer Recreation Center near Battle Creek. After the ACLU wrote a letter to the DNR explaining that it could not discriminate against speech or expression because it is religious in nature, Rev. Stein was permitted to perform his baptisms at the park. The ACLU pointed out in a second letter that the DNR rule prohibiting religious people from passing out flyers or proselytizing in state parks without a permit and without wearing identification badges violated the constitutional right to express oneself while remaining anonymous. After meeting with DNR officials in September, 2002, the DNR agreed to rescind all of its rules governing religious activities in state parks. (Cooperating Attorney: James Rodbard with assistance from ACLU Legal Intern Nathan Livingston).

Religious Freedom Behind Bars – The ACLU filed a class action lawsuit challenging the Michigan Department of Corrections’ rule prohibiting members of the Melanic Islamic Palace of the Rising Sun to practice their religion in prison. Regardless of their disciplinary records, the MDOC designated as security threats all Melanics members and has placed them in administrative segregation until they renounce their religion. Prison officials also confiscated all Melanic religious materials. In September, 2002, the judge issued one of the first opinions in the country upholding the constitutionality of a new federal law upon which the ACLU relies – the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA makes it much easier for inmates to prove that their religious freedom has been violated. In 2004, the U.S. Supreme Court agreed to hear a RLUIPA case from Ohio and decide whether the law is constitutional. (The Melanic Islamic Palace of the Rising Sun v. Martin; ACLU Cooperating Attorneys: Daniel Manville and Susanna Peters).

2002-2003

Know-Your-Rights Pamphlets and Forums – The ACLU of Michigan distributed thousands of the popular Know-Your-Rights pamphlets at Islamic Centers and throughout the Arab communities in the state. At the end of Ramadan in 2002, we were invited to set up a table and distribute pamphlets at a mosque where nearly 5000 people came to worship. ACLU attorneys were also asked to speak during numerous forums in Dearborn and throughout the state <http://www.aclumich.org/about> the rights of the innocent men targeted for questioning.